

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
CINCINNATI

CIVIL ACTION NO. 1:10cv0414 WOB/GBS

JERMAIN CLARDY

PETITIONER

VS.

ORDER

WARDEN, LEBANON CORRECTIONAL
INSTITUTION

RESPONDENT

This matter is before the court upon the Report and Recommendation of the United States Magistrate Judge filed June 1, 2011. It recommends denying Petitioner's 28 U.S.C. § 2254 and not issue a certificate of appealability because three of the six claims are procedurally-defaulted and the remainder are without merit. See Doc. 18. After securing an extension, Petitioner timely mailed and filed his objections before the July 27th deadline. See Doc. 22 (mailed July 21, 2011 and filed July 26, 2011); see also Docket entry 6/23/11 (notice resetting objections deadline served on Petitioner).

Having considered Petitioner's objections *de novo*, and having further independently considered the state court's Rule 26(b) ineffectiveness findings under the applicable deferential AEDPA standards, see, e.g., *Davie v. Mitchell*, 547 F.3d 297,

312-13 (6th Cir. 2008) (where Ohio state courts refuse to reopen direct appeal in Rule 26(B) proceeding because ineffective assistance of appellate counsel claim has no merit, federal habeas review is limited to whether the ineffectiveness finding was correct under AEDPA's deferential standard of review), *cert. denied*, 130 S. Ct. 503 (2009), the court concurs with the Magistrate Judge's reasoning and conclusions that, ultimately, none of the claims have merit.

Therefore, the court being advised,

IT IS ORDERED AND ADJUDGED that the objections (Doc. #22) to the Report and Recommendation of the Magistrate Judge be, and they are, hereby **overruled**; that as noted above the Report and Recommendation of the Magistrate Judge (Doc. #18) be, and it is, hereby **adopted** as the findings of fact and conclusions of law of the court; that the petitioner's § 2254 petition (Doc. #1) be, and it is, hereby **denied**; that no certificate of appealability issue; and that any application to proceed *in forma pauperis* on appeal would not be taken in "good faith." A separate Judgment shall enter concurrently herewith.

This 14th day of September, 2011.



Signed By:

William O. Bertelsman MOB

United States District Judge